

Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 494 (SB) OF 2001
(Old Number 20311 of 1998)

Kunwar Singh Rawat S/o Trilok Singh Rawat,
Presently posted as Naib Tehsildar,
Pithoragarh, Tehsil and District Pithoragarh

.... Petitioner

Versus

1. State of U.P. through Secretary Revenue
Department, Govt. of U.P. at Lucknow
2. Board of Revenue at Lucknow through its Chairman
3. Commissioner Kumaon Mandal, Nainital
4. District Magistrate, District Pithoragarh

..... Respondents

Dated: 16.07.2005

**Coram: - Hon'ble P.C. Verma, J.
Hon'ble P.C. Pant, J.**

By means of this writ petition, the petitioner has prayed for writ of Mandamus directing Respondent No.4 not to interfere in the peaceful functioning of the petitioner as Naib Tehsildar, Pithoragarh as his name has been recommended by Respondent No. 4 (Earlier District Magistrate) Respondent No.3 to Respondent No.2 for regularization of his appointment as Naib Tehsildar, Pithoragarh being a clear vacancy held by petitioner.

The grievance raised in the writ petition is that the petitioner has been reverted by the Board of Revenue, Lucknow-Respondent No.2 from the post of Naib Tehsildar to Van Panchayat Inspector by impugned order dated 19.05.1998 without affording any opportunity. The promotion of the petitioner was made under Rule 28 of U.P. Subordinate Revenue Executive (Naib-Tehsildar) Rules, 1944 (***in short the rules***), which reads as under:-

“28. Officiating and Temporary Appointments:-

- (1) *Temporary vacancies not likely to last for more than six weeks may be filled by the District Officer by appointment of a listed candidate if available in the district, but if no such candidate is available, the most suitable official available may be appointed.*
- (2) *Vacancies lasting for more than six weeks but not more than months shall be filled by the District Officer by the appointment of a listed candidate, if one is available, in the district. If no such candidate is available, a report shall be made to the Commissioner who shall if possible, appoint a listed candidate from some other district of the division. If no listed candidate is available in the division, the Commissioner shall appoint, or authorize the District Officer to appoint the most suitable official available.*
- (3) *All vacancies lasting for more than three months shall, on the report of the Commissioner, be filled by the Board.*

Adhoc appointment cannot last long for years together.”

A perusal of the aforesaid rules shows that Commissioner can make ad-hoc appointment by way of promotion under rules amongst the Supervisor Kanoongo & Van Panchayat Inspector.

The petitioner was a substantive appointee by Van Panchayat Inspector and when the vacancy of Naib Tehsildar was available in the District, the petitioner was given promotion under Rules 28.

In para-9 of the writ petition, it has been stated by the petitioner that one Shri Bachhi Ram was appointed after the appointment of the petitioner, therefore, Shri Bachhi Ram is junior to him. In support of this statement, seniority list has also been annexed.

Therefore, we provide that if any person junior to the petitioner in District Pithoragarh in the feeding cadre is appointed and is working under Rules 28, the petitioner shall also be allowed to continue and in that

event, the reversion order dated 19.05.1998 shall be treated to have been set aside.

With the aforesaid observation, the petition is disposed of accordingly.

Rajeev Dang

(P.C. Pant, J.)

(P.C. Verma, J.)